



POLICE DEPARTMENT

June 10, 2021

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Carlos Pacheco :

Tax Registry No. 956145 :

83rd Precinct :

Case No.

2019-21125

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At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Paul M. Gamble  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Amy Mervish, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Craig Hayes, Esq.  
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To:

HONORABLE DERMOT F. SHEA  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

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## CHARGES AND SPECIFICATIONS

1. Said Police Officer Carlos Pacheco, while assigned to the 83rd Precinct, on or about September 11, 2018, at approximately 1338 hours, in the vicinity of the Kosciuszko Street subway station, Kings County, stopped Obawole-Abraham Bruin without having a legally justified reason.

P.G. 212-11

INVESTIGATIVE ENCOUNTERS

2. Said Police Officer Carlos Pacheco, while assigned to the 83<sup>rd</sup> Precinct, on or about September 11, 2018, at approximately 1338 hours, in the vicinity of the Kosciuszko Street subway station, Kings County, frisked Obawole-Abraham Bruin without having a legally justified reason.

P.G. 212-11

INVESTIGATIVE ENCOUNTERS

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 28, 2021. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Obawole-Abraham Bruin as a witness, and Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Not Guilty of the charged misconduct.

## ANALYSIS

This case deals with an allegation of misconduct that purportedly occurred during an investigative encounter. The Patrol Guide governs such interactions between civilians and Members of Service (in particular, Patrol Guide procedure 212-11); federal law, first outlined in *Terry v. Ohio*, 392 U.S. 1 (1968); and New York law, as detailed in *People v. DeBour*, 40 N.Y.2d 210 (1976); and its progeny. The testimony, in this case, comes from the two main witnesses to the investigative encounter: Respondent and Obawole-Abraham Bruin, the person

who was stopped. While they each testified from their unique perspectives, their testimony was similar and did not differ in any material way.

Respondent's Body-Worn Camera (BWC) captured the encounter between him and Bruin, as well as the investigative steps that Respondent took after the stop (Dept. Ex. 3). In that recording, which corroborates the respective testimonies of Respondent and Bruin, Respondent stops Obawole-Abraham Bruin near DeKalb Avenue and Broadway (Dept. Ex. 3 at 13:46:24-13:47:38)<sup>1</sup>. The recording also shows that several other police officers, including Respondent's Patrol Supervisor, responded to the scene and assisted in the investigation. Respondent then questioned Bruin and eventually placed him in handcuffs (*Id.* at 13:46:24-13:46:58). A pat-down search is then conducted, which does not reveal the presence of a firearm (T. 70; Dept. Ex. 3 at 13:47:03-12:47:24).

#### *1. Facts Preceding the Encounter*

The Department offered in evidence a recording and transcript of a 911 call (Dept. Exs. 1, 1A). In that recording, the caller, who provided her name and callback number, reported "an individual out there with a weapon...a gun...tall...brown skin, medium tone...male...had on jeans, a black short-sleeved shirt with a hood...closing his hands on the weapon like as he's walking...in front of him...like on his waist...he didn't have on a belt...walking in that direction down Broadway and DeKalb...up..." (*Id.*).

The Department also offered in evidence a Sprint report which detailed the information the dispatcher provided Respondent: "DeKalb and Broadway for a 10-10 with a firearm: male

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<sup>1</sup> I have examined the contents of the BWC recording in its entirety. I take judicial notice of Google Maps and the images which resulted after performing a search for "Broadway and DeKalb Avenue." Based upon a comparison of the BWC recording and the search results, I find that the stop occurred in front of 1160 Broadway, near Broadway and Kosciusko Street.

black, wearing jeans, black short-sleeved shirt with a hood, gun in the waist in the front...female complainant states she saw the gun...brown skin" (Dept. Exs. 2A, 2B).

2. *The Detention and Frisk*

On September 11, 2018, Respondent and his partner, Police Officer Lattanzio, performed patrol duties in the 83rd Precinct (T. 58). At approximately 1338 hours, they received a radio report of a man with a gun in the vicinity of DeKalb Avenue and Broadway (*Id.*, Dept. Ex. 2A, 2B).

Respondent testified that the "gun run" contained a location at "Broadway and DeKalb" and provided a description of a "tall male, like a dark or a blue top with jeans." The caller "observed [the suspect] with a firearm in his hand and then in his waistband." Respondent recalled that the race of the individual described in the radio report was "Black." He further believed that the location was on the same block at the Kosciuszko Street subway station (T. 60).

Respondent then observed Bruin from his police vehicle walking southbound on Broadway; he described him as a tall male, Black, "the top of his clothing was as described in the call, the bottom of his clothing was as described in the call" (*Id.* at 61). At that time, Bruin was on Respondent's left as he drove on Broadway in the same direction Bruin was walking (*Id.* at 61, 88-89). As Bruin walked, he made eye contact several times with Respondent; he then walked into a grocery store and stood near the windows facing the street. Respondent made a U-turn, then a right turn east onto Patchen Avenue from Broadway. Respondent drove three car lengths down Patchen Avenue before stopping and looking through his rear window; he observed Bruin exit the store and begin walking northbound on Broadway (*Id.* at 63-64, 88-89).

Respondent then reversed his vehicle and drove north on Broadway (*Id.* at 65, 88-89). As Respondent approached Bruin, Bruin turned around and looked at him. Respondent stopped his vehicle approximately 10-15 feet from Bruin and stepped out. According to Respondent, Bruin

continued walking away from him until he called out, "Sir, let me speak to you please" (*Id.* at 65-66). Respondent also observed that Bruin had a bag in his hand. Bruin turned around and began walking toward Respondent while saying, "I got nothing" (T. 66). Respondent told Bruin the reason for the stop and directed him to stand next to a storefront, as he wanted to conduct his inquiry out of the way of pedestrian traffic. Once Bruin arrived at the storefront, Respondent repeated why he had stopped him; at that point, Respondent observed that Bruin appeared to become agitated. Respondent testified that he became concerned that Bruin might flee the location or begin fighting, so he placed him in handcuffs. Once Respondent handcuffed Bruin, he conducted a pat-down search, attempting to determine if Bruin indeed had a weapon on his person, before continuing his investigation (*Id.* at 67-70). Respondent recalled that when Bruin first walked toward him during the stop, he said, "Hey, you can check me." Respondent stated that he interpreted that statement as Bruin consenting to a frisk (*Id.* at 70).

On cross-examination, Respondent conceded that there were no references in the 911 call to the suspect wearing a black baseball cap, the color of the jeans the suspect was wearing, the suspect's weight, age, or hairstyle. When confronted with the BWC footage in Department Exhibit 3, Respondent conceded that: (1) Bruin was wearing a Mets baseball cap that was not part of the description the dispatcher provided him; (2) Bruin was wearing a T-shirt that did not have a hood; and (3) he did not observe a bulge on Bruin's person and specifically did not observe a bulge on his waistband (*Id.* at 77-81).

At the scene, Respondent radioed the dispatcher twice and asked her to replay the suspect's description. The first time he requested it was for Bruin to hear it while the investigation proceeded, and the second time was for Respondent while he searched through a trash bin for the weapon that the caller indicated the suspect had in his possession (*Id.* at 82-83).

Obawole-Abraham Bruin testified that on September 11, 2018, he was wearing "a Mets snapback hat, a navy blue compression t-shirt, black jeans and . . . gray shoes maybe" (*Id.* at 15). According to Bruin, Respondent said, "Hey, we want to talk to you," as he walked on Broadway (T. 15, 42-43). He had been walking away from Respondent, but when he heard Respondent call out to him, he turned around and walked toward him. When Bruin said, "What's up?" Respondent directed him to move over to a wall (*Id.* at 42-43). He then asked, "What's going on?" and was told by Respondent that he fit the description of "someone who had a firearm" (*Id.* at 20, 44, 51).

According to Bruin, he told Respondent, "I don't have anything, you can check me" (*Id.* at 44-46, 52). He then decided to begin recording the encounter with his mobile telephone; at that point, he was handcuffed and frisked in the area around his waistband, pockets, and rear pants pockets. Respondent then asked Bruin where the firearm was, to which he replied that he did not have one (*Id.* at 16, 23-24, 46, 51).

Bruin recalled that the description Respondent provided to him was "black male, jeans, and a blue shirt" (*Id.* at 20). Bruin was shown Department Exhibit 3, from 0:00 to 02:30. He confirmed that he was the individual on the recording in the presence of the police. He described his appearance in the video as "African American male, baseball cap, blue compression shirt, the one in handcuffs" (T. 38)

On cross-examination, Bruin acknowledged that at the time he was stopped that he was holding a bag in his hand, which, according to him, contained a beverage purchased from the grocery store he exited just before being stopped (*Id.* at 39-41).

## *2. Investigative Steps After the Stop*

While Respondent's fellow officers were detaining Bruin, he spoke with his Patrol Supervisor and described his observations which led up to Bruin's stop (Dept. Ex. 3 at 13:47:49-

13:48:17). After a brief discussion, they began walking uptown on Broadway toward the entrance to the Kosciuszko Street elevated train station, located at Broadway and Patchen Avenue (T. 70, 89; Dept. Ex. 3 at 13:48:23-13:48:59). Respondent used his flashlight and extended baton to look through a trash bin located at the bottom of the stairway (T. 91-92; Dept. Ex. 3 at 13:49:07-13:49:20). Respondent and the Patrol Supervisor then crossed Patchen Avenue and walked to the opposite corner on Broadway, where Respondent examined another trash bin in the same manner (Dept. Ex. 3 at 13:49:21-13:49:43).

Respondent then entered a convenience store<sup>2</sup> on the same corner, then questioned a male standing behind the counter about "a male who had recently stepped into the store without making a purchase." Respondent and the Patrol Supervisor described a "male Black with a black baseball cap on, black jeans, [unintelligible] shirt." The person behind the counter professed to have no recollection of such an individual. Respondent's BWC also captured the Patrol Supervisor bending over and looking inside a space near the grocery store window (Dept. Ex. 3 at 13:49:47-13:50:18).

Respondent and the Patrol Supervisor returned to the location where Bruin was still being detained. He was placed into Respondent's vehicle and transported to the 83rd Precinct before being issued a summons for disorderly conduct<sup>3</sup> (T. 48-49, 71).

At issue, in this case, is whether Respondent had sufficient legal authority to conduct a "Terry/Level 3" stop; also at issue is whether Respondent had reasonable suspicion to believe that Bruin was armed and dangerous, justifying a pat-down search for weapons. I credit Respondent's testimony as forthright, fulsome, and corroborated by independent evidence. I

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<sup>2</sup> Google Maps depicts the name of the store on that corner as "mini Deli market."

<sup>3</sup> The summons was eventually dismissed.

credit Bruin's testimony to the extent that his description of the encounter was consistent with Respondent's testimony and Respondent's BWC recording.

*Specification 1: Unlawful Stop*

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent stopped Obawole-Abraham Bruin without sufficient legal authority.

Patrol Guide procedure 212-11 defines a "Terry Stop (Level 3 Encounter)" as "any encounter between a civilian and a uniformed member of the service in which a reasonable person would not feel free to disregard the officer and walk away" (P.G. 212-11, Definitions). Under this procedure, "a stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor" (*Id.*).

In this case, Respondent received a radio bulletin alerting him to the presence of a Black male suspect with brown skin, wearing jeans and a t-shirt with a hood, carrying a gun in his front waistband, near Broadway and DeKalb Avenue. Respondent drove to that location and saw a male suspect who, in his view, fit the description of a tall male, wearing jeans and a dark t-shirt, thereby corroborating the details of the bulletin (*People v. Whittle*, 102 AD3d 710 [2d Dept. 2013]; *People v. Brown*, 14 AD3d 356 [1st Dept. 2005]; *People v. Panzarino*, 282 AD2d 292 [1<sup>st</sup> Dept. 2001]; *People v. Montes*, 283 AD2d 151 [1st Dept. 2001]).

I had the opportunity to view Obawole-Abraham Bruin when he testified before the Tribunal. He is, indeed, a tall, brown-skinned African American male, consistent with the description provided by the 911 caller in Department Exhibits 1, 1A, 2A, and 2B. While there is no dispute that Bruin was not wearing a t-shirt with a hood and that the 911 caller's description did not include a cap, I find these facts did not have a sufficient impact upon the specificity of



the report provided to call into question whether Respondent had stopped the right person (*People v. Applewhite*, 298 AD2d 136 [1st Dept. 2002]; *People v. Mumit*, 106 AD2d 411 [2d Dept. 1984]).

I further find that the 911 caller's assertion that she saw the suspect holding a gun in his hand made clear her basis of knowledge for claiming the suspect was in the act of committing a crime. New York courts have held that information provided by an identified civilian which contains a detailed description of the suspect, at a particular location, with a sufficient basis of knowledge, establishes reasonable suspicion, especially when the suspect is the only person at that location fitting the description (*People v. Johnson*, 245 AD2d 112 [1st Dept. 1997]; *People v. Wiley*, 209 AD2d 361 [1st Dept. 1994]; *People v. Armsworth*, 27 AD3d 571 [2d Dept. 2006]).

I further find that Respondent's observation of Bruin's movements could reasonably be construed as furtive behavior (*i.e.*, making eye contact with Respondent several times; stepping into a grocery store for a brief time and maintaining surveillance of the street, and changing his direction of travel once he was aware of Respondent's presence), adding to Respondent's suspicion that Bruin had committed, was committing or about to commit a crime (*see People v. Turner*, 250 A.D.2d 534 [1st Dept. 1998][defendant darted out of a crowd to evade police]; *People v. Smith*, 245 A.D.2d 39 [1st Dept. 1997][defendant's nervous manner, furtive movements with hands, walking and then running, precisely matching a detailed description]).

Based upon the foregoing, I find Respondent Not Guilty of Specification 1.

*Specification 2: Unlawful Frisk*

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent conducted a frisk on the person of Obawole-Abraham Bruin without sufficient legal authority.

Under New York law, it is well-settled that “[w]here a police officer entertains a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor, the CPL authorizes a forcible stop and detention of that person. A corollary of the statutory right to stop an individual is the authority to frisk if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed” (*People v. DeBour*, 40 N.Y.2d 210, 223 [1976]; P.G. § 212-11, Definitions).

In this case, Respondent, acting on his suspicion that the suspect he stopped was the same suspect described in the radio bulletin, conducted a limited pat-down search for a weapon. I find that his concern was well-founded, based upon the 911 caller's assertion that she saw the suspect holding a gun. I further find that he was entitled to rely on the 911 caller's information because he corroborated her information with his own observation of a person who matched her description, in the same area where she said she had seen him. Finally, in combination with the other factors, Bruin's furtive behavior could have reasonably led Respondent to believe that if he had stopped the right person, such a person would likely have a firearm.

I find that Respondent's conduct after he did not recover a firearm from Bruin's person was further evidence that he reasonably believed he would find one, even if that belief was ultimately never substantiated by the recovery of a weapon. As documented on Respondent's BWC, he proceeded to retrace the steps he had seen Bruin take to identify a place where he may have discarded a firearm. He searched two trash bins on Broadway and entered the store that he had seen Bruin enter. That Respondent did so in the presence of his Patrol Supervisor suggests a genuine attempt to recover a weapon rather than a performative exercise designed to reverse-engineer a basis for an otherwise unconstitutional stop.

In the alternative, I find that Bruin consented to the pat-down search when, having been informed that Respondent was stopping him based on a report of a “man with a gun,” he told

Respondent, "Go ahead, you can check" (*see People v. Bongiorno*, 243 A.D.2d 719 [2d Dept. 1997])[finding voluntary consent to search a jacket and bag where an individual told the offer to "go ahead"])). Under the totality of the circumstances, I find that Bruin gave such consent voluntarily (*see generally People v. Ochoa*, 262 A.D.2d 359 [1st Dept. 1999]; *People v. Gonzalez*, 115 A.D.2d 73 [1st Dept. 1986]).

I further find the Department's argument that since Respondent did not recover a weapon, then, *ipso facto*, he violated the Patrol Guide to lack merit. While it is inevitable that the application of the reasonable suspicion standard may occasionally result in a person, innocent of any crime, being subjected to a limited detention while police conduct a street-level investigation, rigorous application of that standard seeks to ensure that civilians do not have their movements interfered with by police based merely upon whim or caprice. As the Supreme Court explained in the seminal case of *Terry v. Ohio*, 392 U.S. 1, 27 (1968):

Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger (*Cf. Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Brinegar v. United States*, 338 U.S. 160, 174-176 (1949); *Stacey v. Emery*, 97 U.S. 642, 645 (1878)).<sup>23</sup> And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience (*Cf. Brinegar v. United States supra*).

Based upon the foregoing, I find Respondent Not Guilty of Specification 2.

APPROVED

JUL 30 2021

D. SHEA  
POLICE COMMISSIONER

Respectfully submitted,

Paul M. Gamble

Assistant Deputy Commissioner Trials